

Complaint

IN THE MATTER OF

DO-RAY LAMP COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 4218. Complaint, Sept. 24, 1941¹—Decision, Feb. 3, 1942

Where a corporation, engaged in the manufacture and interstate sale and distribution of fog lamps, auxillary driving lights and other accessories for use on automobiles and trucks; by means of circulars and advertisements in trade publications and statements on the containers—

Represented or implied that its "Bright Ray Crest Driving Lamp" provided new and unusual lighting safety when used on a motor vehicle, and developed 40,000 candlepower; would penetrate fog, snow, rain, or dust, regardless of their density, and would provide safe driving visibility of 1,500 feet under all conditions;

The facts being that many similar lamps provided the same safety under the same conditions and use; its said lamp developed substantially less than aforesaid candlepower, and would not penetrate fog, snow, rain, or dust to the extent claimed, or so as to assure visibility and safety under all conditions;

With the effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, and thereby causing it to purchase its said product:

Held, That its said acts and practices, as above set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Clark Nichols for the Commission.

Mr. Norris Spector, of Chicago, Ill., for respondent.

AMENDED AND SUPPLEMENTAL COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Do-Ray Lamp Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Do-Ray Lamp Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at

¹ Amended and supplemental.

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1458 South Michigan Avenue, Chicago, Ill. Respondent is now, and for more than 2 years last past, has been engaged in the manufacture and sale of fog lamps, auxiliary driving lights, reflectors, flares, and various other accessories for use on automobiles and trucks. One of the lamps manufactured by the respondent is known as the "Bright Ray Crest Driving Lamp." Respondent causes said products, when sold, to be transported from its place of business in the State of Illinois to the purchasers thereof located in the various other States of the United States, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce between and among the several States of the United States, and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of its product "Bright Ray Crest Driving Lamp" respondent has made many statements and representations with respect to its product through the means of circulars and by advertisements placed in trade publications, all of which are circulated among prospective purchasers throughout the United States, and on the containers in which said lamps are packaged for sale. Among and typical of such statements and representations so used and disseminated as aforesaid are the following:

Now new car lighting safety on any car or truck with THE CREST, the aristocrat of driving lamps.

Develops 40 thousand candle power. Visibility 1,500 feet. Penetrates fog—no glare. Fits all cars—thrift proof. Brass chrome plated.

Develops 40 thousand candle power—visible 1,500 feet—daylight brilliance—no glare—penetrates fog, snow, rain, or dust.

CREST DRIVING LAMP

Develops 40 Thousand Candle Power.

Visibility 1,500 feet.

Penetrates Fog—No Glare.

Through the use of the foregoing statements and representations and other of similar import and meaning, not specifically set out herein, all of which purport to be descriptive of respondent's said lamp and its effectiveness in use, respondent represents or implies that its said driving lamp provides new and unusual lighting safety when used on a motor vehicle; that said driving lamp develops 40,000 candlepower when used on a motor vehicle; that said lamp will penetrate fog, snow, rain, or dust regardless of their density; that when used on a motor vehicle it will penetrate fog, snow, rain, or dust, regardless of their density, to the extent that safe driving visibility of 1,500 feet is pro-

vided; that it will penetrate fog, snow, or dust to the extent that safe driving is assured under all conditions.

PAR. 3. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, said driving lamp does not provide new and unusual lighting safety when used on a motor vehicle. Many similar driving lamps provide the same safety under the same conditions and use. Said driving lamp, when used on a motor vehicle, does not develop 40,000 candlepower but substantially less than said amount. Respondent's said driving lamp will not penetrate fog, snow, rain, or dust regardless of their density. When used on a motor vehicle it will not penetrate fog, snow, rain or dust, regardless of their density, to the extent that safe driving visibility of 1,500 feet is provided. It will not penetrate fog, snow, rain, or dust to the extent that visibility and safety are assured under all conditions.

PAR. 4. The use by the respondent of the foregoing false and misleading and deceptive statements, representations, and implications respecting its said product as to candlepower, visibility, and penetration of fog, snow, rain, and dust has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such representations and implications are true, and causes a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase said product.

PAR. 5. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 5, 1940, issued and subsequently served its complaint in this proceeding upon respondent Do-Ray Lamp Co., Inc., a corporation, charging it with unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the filing of respondent's answer to said complaint the Commission on September 24, 1941, issued and subsequently served upon respondent an amended and supplemental complaint in this proceeding charging violation of the aforesaid statute. Respondent filed an answer admitting all the material allegations of facts set forth in said amended and supplemental complaint and waiving all intervening procedure and further hearing as to said facts. Thereafter, this pro-

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ceeding regularly came on for final hearing before the Commission on the amended and supplemental complaint and the answer thereto; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Do-Ray Lamp Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 1458 South Michigan Avenue, Chicago, Ill. Respondent is now, and for more than 2 years last past has been, engaged in the manufacture and sale of fog lamps, auxiliary driving lights, reflectors, flares, and various other accessories for use on automobiles and trucks. One of the lamps manufactured by the respondent is known as the "Bright Ray Crest Driving Lamp." Respondent causes said products, when sold, to be transported from its place of business in the State of Illinois to the purchasers thereof located in the various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of its product "Bright Ray Crest Driving Lamp," respondent has made many statements and representations with respect to its product through the means of circulars and by advertisements placed in trade publications, all of which are circulated among prospective purchasers throughout the United States, and on the containers in which said lamps are packaged for sale. Among and typical of such statements and representations so used and disseminated as aforesaid are the following:

Now new car lighting safety on any car or truck with THE CREST, the aristocrat of driving lamps.

Develops 40 thousand candlepower. Visibility 1,500 feet. Penetrates fog—no glare. Fits all cars— theft proof. Brass chrome plated.

Develops 40 thousand candlepower—visible 1,500 feet—daylight brilliance—no glare—penetrates fog, snow, rain, or dust.

CREST DRIVING LAMP

Develops 40 Thousand Candlepower.

Visibility 1,500 feet.

Penetrates Fog—No Glare.

Through the use of the foregoing statements and representations, and others, of similar import and meaning, not specifically set out herein, all of which purport to be descriptive of respondent's said lamp and its effectiveness in use, respondent represents or implies that its said driving lamp provides new and unusual lighting safety when used on a motor vehicle; that said driving lamp develops 40,000 candlepower when used on a motor vehicle; that said lamp will penetrate fog, snow, rain, or dust regardless of their density; that when used on a motor vehicle it will penetrate fog, snow, rain, or dust, regardless of their density, to the extent that safe driving visibility of 1,500 feet is provided; that it will penetrate fog, snow, rain, or dust to the extent that safe driving is assured under all conditions.

PAR. 3. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, said driving lamp does not provide new and unusual lighting safety when used on a motor vehicle. Many similar driving lamps provide the same safety under the same conditions and use. Said driving lamp, when used on a motor vehicle, does not develop 40,000 candlepower but substantially less than said amount. Respondent's said driving lamp will not penetrate fog, snow, rain, or dust regardless of their density. When used on a motor vehicle it will not penetrate fog, snow, rain, or dust, regardless of their density, to the extent that safe driving visibility of 1,500 feet is provided. It will not penetrate fog, snow, rain, or dust to the extent that visibility and safety are assured under all conditions.

PAR. 4. The use by the respondent of the foregoing false, misleading, and deceptive statements, representations, and implications respecting its said product as to candlepower, visibility, and penetration of fog, snow, rain, and dust has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such representations and implications are true, and has caused, and causes, a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase said product.

CONCLUSION

The acts and practices of the respondent, as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and answer of respondent and upon the amended and supplemental complaint of the Commission and the answer of the respondent thereto, in which answer respondent admits all of the material allegations of fact set forth in said amended and supplemental complaint and waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Do-Ray Lamp Co., Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of its "Bright Ray Crest Driving Lamp" for use on motor vehicles, or any substantially similar lamp, under the same or any other name, do forthwith cease and desist from representing, directly or by implication:

1. That said lamp, when used on a motor vehicle, provides new and unusual lighting safety.

2. That said lamp, when used on a motor vehicle, will develop 40,000 candlepower, or any other number of candlepower in excess of the number actually developed.

3. That said lamp, when used on a motor vehicle, will penetrate fog, rain, snow, or dust regardless of their density.

4. That said lamp, when used on a motor vehicle, will penetrate fog, snow, rain, or dust, regardless of their density, to the extent that safe driving visibility is provided for 1,500 feet, or for any other distance in excess of the actual distance for which safe driving visibility is provided.

5. That said lamp, when used on a motor vehicle, will penetrate fog, snow, rain, or dust to the extent that visibility and safety are assured under all conditions.

It is further ordered, That respondent shall, within 60 days after service upon it of this order, file with the Commission, a report in writing setting forth in detail the manner and form in which it has complied with this order.

Syllabus

IN THE MATTER OF

PARKE, AUSTIN & LIPSCOMB, INC., SMITHSONIAN INSTITUTE SERIES, INC., AND OFFICERS THEREOF

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 4465. Complaint, Feb. 14, 1941—Decision, Feb. 3, 1942

Where a corporate publisher of books of an encyclopedic and historical nature, its wholly owned subsidiary, and three individuals who served both as general officers; following the entering into of a contract by said subsidiary with the Smithsonian Institution of Washington, D. C., whereby it agreed to engage in the publication, sale, and distribution exclusively of a 13-volume set of books compiled from data collected by said Institution in various scientific investigations, to be designated as "Smithsonian Scientific Series," manuscripts for which were to be furnished by said Institution upon certain terms, including payment to it of a royalty of 10 percent of gross sales, the copyrights, plates, manuscripts, etc., to remain said subsidiary's exclusive property—

- (a) Represented, directly and through salesmen and agents, to whom they issued a so-called "authorized presentation" setting out in detail the sales talk to be used for the purpose, that such salesmen were representatives of the Smithsonian Institution, that the books in question were published and sold by the Institution, the entire profit derived from the sale thereof accruing to it, and that sales were restricted to a small number of selected individuals in each community; and
- (b) Caused said Smithsonian Institution to issue to all purchasers of said "scientific series" a certificate under its seal and duly signed by its secretary certifying that the particular purchaser had been registered in its archives as a patron of series in question, in recognition of support of the Institution's program for the diffusion of knowledge among men; facsimiles of which certificates their salesmen exhibited to prospective purchasers;

Notwithstanding the fact sale and distribution of books in question was an ordinary commercial enterprise for profit; the small royalty aforesaid was the only benefit derived from sale thereof by said Institution, which did not publish said books, own or control the copyright, plates and other material thereof, or have any control over agents or salesmen, who were employees of aforesaid corporations and individuals; and purchasers had not been specially selected to act as patrons of said Institution, but the books were sold indiscriminately to the general public; and

- (c) Falsely and misleadingly represented, through use in corporate name of said subsidiary of words "Smithsonian Institution," that such corporation was part of or connected with the Smithsonian; thereby also accentuating other false and misleading representations made in the sale of their said books;
- With effect of misleading and deceiving a substantial portion of the purchasing public into the mistaken belief that they were purchasing said "Smithsonian Scientific Series" directly from the Smithsonian Institution of Washington, D. C., long identified in the public mind as a nonprofit organization devoted